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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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OMAR HURLOCK, *on behalf of himself and all others similarly situated*,

Plaintiff,

v. 25 Civ. 3891 (JLR)

KELSIER VENTURES, *et al.*,

Defendants. Ex Parte Conference
(Remote)

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New York, N.Y.
May 27, 2025
2:04 p.m.

Before:

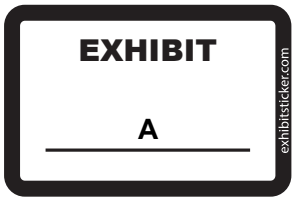
HON. JENNIFER L. ROCHON,

District Judge

APPEARANCES

TREANOR LAW PLLC
Attorneys for Plaintiff
BY: TIMOTHY J. TREANOR, ESQ.

BURWICK LAW
Attorneys for Plaintiff
BY: MAX BURWICK, ESQ.



(Case called)

THE COURT: Good afternoon, everyone. Before we get started, let me just put a few things on the record.

We're proceeding here via Microsoft Teams through videoconference for the convenience of the parties so that I could get you on as soon as possible. I have on the line my deputy and my clerk. We also have a court reporter on the line who is transcribing these proceedings, and no one other than court personnel should record or rebroadcast these proceedings.

We are here on a request for a TRO from plaintiffs. This is an *ex parte* hearing. There was a request for an *ex parte* TRO. It was filed late last week, and I put you on for the first day after the holiday that I could get you on, today. And so I've read your papers. I have some questions, but I'm here to listen to whatever you'd like to present, Mr. Treanor, but let me take appearances first.

Who do I have on behalf of Mr. Hurlock?

MR. BURWICK: Max Burwick of Burwick Law, your Honor.

THE COURT: Thank you. And?

MR. TREANOR: And Tim Treanor from Treanor Law.

THE COURT: Okay. So I have both of you.

All right. Who would like to take lead on this?

MR. TREANOR: Sure, your Honor. I'm happy to address our motion. And I want to start by thanking your Honor for giving us your time. I know we asked for it to be heard on

short notice, and we appreciate that you're giving us the attention.

Hopefully it's apparent to you why it is that we asked to be heard *ex parte*, and that we're seeking a TRO and a preliminary injunction. You know, I can touch on the background of the case a little bit.

This is based on a series of events that have gotten quite a lot of publicity, and we've provided to you, in the form of my declaration, links to some of the newspaper articles and some of the videos and statements that were posted, but essentially it's based on the release of a meme coin. Back in February 14th of this year——so only three months ago——a meme coin named $LIBRA was released by the defendants in this case, and meme coins were for a short while a bit of a craze and were getting a lot of attention from investors, and in this particular case, the meme coin release was really an elaborate fraud scheme. It had a number of different parts, some related to grabbing attention and drawing people into the investments, and other parts of it were directed at manipulating the investments and extracting value in a way that was deceitful to the investors. And it started out with the creation of a website project called Viva La Libertad, which was purportedly a project to help develop the Argentine economy by raising funds for small businesses, a website was created. And the effort was a sham. There was no real effort to develop the

Argentine economy through this project. That was the first step.

The second step was really lining up touters. And this is common in the meme coin space, to get prominent people to basically draw attention by claiming support for your project. And in this case they enlisted the support of the president of Argentina, through a number of meetings, enlisted his support for the coin, the $LIBRA coin, and he in fact did tweet, right, in coordination with the release time in support of the coin and provided a contact address for investors to find the coin and to purchase it.

There were other touters who were lined up who didn't ultimately make statements on behalf of the coin. One of them was an individual named David Portnoy, who is significant because he has a real following. He's somebody who conceivably could have helped to pump this coin up more had he said something. He was lined up.

THE COURT: But he didn't say anything.

MR. TREANOR: He didn't. In his own acknowledgment, he was a moment away from basically stating his support, and he decided against it.

So Milei himself also tweeted support, and after about six hours or five hours, he retracted that support, but during that period of time, the trading activity was truly frenzied. There were many, many individuals who invested in the $LIBRA

coin. The totals, you know, are hard to calculate because a lot of folks have done analysis on the blockchain to see how many wallets lost money, but the numbers that we've seen that are sort of most of all, they're about 75,000 wallets lost a total of over $280 million, perhaps more than that. There's still counting going on by some folks out there publicly. And the price of the coin went to a height that, you know, would have translated into a market capitalization of about $4.5 billion. Now that's not real money. That's if, at the highest price a coin sold, if every other coin could have been sold at that amount, it would have equaled that. But the individual coin price went very high. And behind the scenes, there were really four steps that the developers were——I think we lost somebody.

THE COURT: I'm just going to make sure it's not our court reporter. Give me a moment.

(Discussion off the record)

THE COURT: You may continue, Mr. Treanor.

MR. TREANOR: Okay. Thanks.

So behind the scenes, an elaborate scheme had been lined up to once, you know, interested investors had started——there we go.

THE COURT: Can you pause for one moment, please.

MR. TREANOR: Sure.

THE COURT: Okay. Go ahead. Thank you. That's just

my deputy, by the way. Nobody else has joined.

MR. TREANOR: Okay. Great.

So behind the scenes there are really four phases of an elaborate market manipulation scheme going on, beyond just the pump, you know, aspect of having the website and getting the touters.

First of all, the developers were doing what was called sniping their coin. Essentially, a certain amount of coins are released, and the public is informed of the certain amount of coins being released. But since the developers know exactly when the coins are going to be released, they can jump in and be the first ones to buy the coins at the lowest amount and essentially control a greater amount of the coins, restrict the supply that is circulating publicly. The value of doing that is a couple: (1) it can show purchasing activity on the blockchain, shows the coin is selling; and the other is, it restricts the supply, and if you can restrict liquidity, you're more effective at manipulating price, so that if there are less coins out there, it's easier to push the price north.

THE COURT: Mr. Treanor, let me just move you to a couple of topics that I want to hear about.

One is, so this action was filed in state court and then removed to federal court on May 9, 2025, and no request for expedited relief, or *ex parte* relief was sought until you came to me just a few days ago. Why the delay?

MR. TREANOR: So, your Honor, so first of all, this matter is fairly complicated, and the blockchain analysis is time-intensive and it's also expensive, and so actually identifying some of the coins and where they currently exist and understanding that we could actually freeze the ones that are USDC was a difficult process. The case was——I don't think that there was any view that there wasn't urgency at any point in this. I think it just was a matter of bringing together the resources to be able to put this motion before your Honor. I was not a part of the case in state court. It was removed federally. I just put in a notice of appearance last week. But these matters have been subject to scrutiny and being looked at, and I think, you know, we——I was very involved in putting the papers together, and that was not something, you know——I was not on the matter previously. And so, you know, I think that——we don't want to understate the urgency. We don't really think that there was a lack of urgency in the state. It was a matter of getting together the ability to actually put these papers before your Honor in a way that we thought was well thought through, would give you everything that you need to actually issue the order, including the blockchain-tracing analysis, finding the funds to invest and actually getting that accomplished. And so we do recognize that it would have been ideal had we been able to act sooner, but practically speaking, you know, things are always possible, but it was not really

practical.

THE COURT: And so when was the tracing finalized by Mr. Ehrenhofer?

MR. TREANOR: He finalized the tracing I think on Monday or Tuesday of last week, and——

THE COURT: Okay.

MR. TREANOR: Yeah. We——

THE COURT: Thank you.

All right. My next question deals with the other case that I have that is a federal securities action governed by the PSLRA. And so why are you not sort of skipping the line here to an entire class action that's been filed with respect to the fraud that has allegedly taken place here?

MR. BURWICK: Tim, I can handle this, or do you want to take it?

MR. TREANOR: Sure, yeah.

MR. BURWICK: Your Honor, these cases, while there is a nexus here, they're largely unrelated in that, when looking at the $M3M3 matter, that is a token that has a completely different historical background, marketing efforts were different, the way in which it was sold to clients, promises, and because of that, it falls into the securities regime, whereas this matter here, as Tim has described, the nexus here of damages for the clients is fairly unrelated and deals more with the fraud issues as well as the touters that Mr. Treanor

has described.

THE COURT: Well, so then Mr. Burwick, I have here a letter that was filed on May 13th from Cahill Gordon that represents that they had discussions with all parties, including I presume you, who represented the plaintiff in the Hurlock action, and that there was agreement that because of the——and I'm reading from the letter—— "because of the similarities among the underlying factual and legal issues, everyone requests that discovery be stayed in *Hurlock* pending resolution of the motion to dismiss in the PSLRA case." That doesn't sound urgent to me in this case then.

MR. BURWICK: Well, your Honor, I think——

MR. TREANOR: Your Honor, I think——

THE COURT: Let me just ask a different question. It doesn't sound like there's a sense of urgency in this case if you're not going to move forward in discovery in this case. And Mr. Burwick, why don't you tell me.

MR. BURWICK: Yes, your Honor. The main difference here is the location of the assets, and what is distinct here is that the USDC in question that's the subject of the TRO, in relation to $LIBRA, is the direct by-product of the $LIBRA fraud, and given that and given that the USDC has the——it can be immediately removed, and then once it is removed from its current wallet, it can become almost untraceable. One of the common fallacies in blockchains is that because everything is

on chain, there's somewhat of a simplicity in being able to identify those assets after they've been removed in the recovery process. This is largely untrue, given whether it's a centralized exchange or any types of mix of technologies, it becomes very difficult to actually trace those assets.

Additionally, the USDC involved in this action is unique, particularly just to $LIBRA. These funds are the direct by-product of only the $LIBRA scam. They have not touched on anything that is related to the $M3M3 operations other than the common usage of the Meteora platform.

THE COURT: Okay. I'll ask the question again, though. Why are you not proceeding with discovery in this action?

MR. TREANOR: Your Honor, there's just a distinction between the urgency of freezing these assets. I think once we have these assets frozen and the confidence that we've put the plaintiff and the class in a position to actually have some assets to recover from, if we get to that stage, at that point discovery is——I wouldn't say not urgent, but I would say there's a little bit more of an ability to entertain some additional time.

I also think, your Honor, you know, there is some thought——I shouldn't be surprised reading the declaration, but there is some thought to superseding with other, more appropriate claims, and I think the team needs time to do that.

But the assets are just a separate consideration from that. We believe the basis for freezing the assets is present, and so we ask the Court to do that. If we wait until we get into discovery——yeah, if the assets were hanging out there, I think we would probably be pushing very hard for discovery and to move this case, but we don't think that we have to be in that position.

THE COURT: And can you address the topic that you give fairly short shrift to, *Grupo Mexicano* and others, that talk about how an injunction under Rule 65 is not really appropriate to freeze assets to make sure that they're available for an ultimate judgment, or in an action brought solely under law. So can you talk to me a little bit about that. I mean, every case that I have, somebody comes before me and says, you know, I brought this case, and I'm afraid that the defendants are not going to have money at the end of this case to pay it, and let's move things faster. So tell me why this is different.

MR. TREANOR: Yeah. Your Honor, it's different because what we're asking to freeze is clearly straight-line, you know, proceeds of the fraud. We're not asking for any of the defendants——for their general assets that they may have obtained from other sources to be frozen. We're asking for only those things that derive straight from the $LIBRA scheme. And the $LIBRA scheme, we've identified it really in three

buckets——setting aside the issue with regards to Circle, but——in three buckets, because there are sort of discernible groups and sort of concentric groups. The first is the most broad one, which is anything that is the proceeds of $LIBRA. You know, all these defendants were involved in trading $LIBRA, and they will know what they have. Over $280 million was pulled from investors. They'll know if they have any of it, and they need to freeze it. If it's not $LIBRA proceeds, then it would not be subject to the proposed order. So it would only be things that——

THE COURT: One moment, Mr. Treanor.

When you say $LIBRA proceeds, do you mean the actual traced proceeds that Mr. Ehrenhofer has traced, which you can actually show come from $LIBRA, or are you just talking about that they——and I'm using the wrong word, I'm sure——traded or were somehow involved in $LIBRA and made some money on it and put it in their bank account and you're asking me to freeze that?

MR. TREANOR: Yes, your Honor. Most broadly, we think that each of the defendants, that it's appropriate for them to be ordered, to the extent they have anything that came out of this fraud scheme, that they're not to move it, or dissipate it.

THE COURT: You have to tell me what you mean by "anything that came out of the fraud scheme."

MR. TREANOR: Any of the $280 million that was the proceeds, all of those funds were extracted from what's known as a liquidity pool. They were pulled out of the trading pools that were made available to people buying the $LIBRA coins. So any of that money. And Hayden Davis speaks very clearly about $110 million of it, in which he says that he pulled together all the proceeds, all the fees, and it amounts to—he's currently holding onto what amounts to $110 million that he controls. And so that is the second sort of level of the order is the 110 that he specifically identified. Now we think we have identified almost 58 million of it, of the assets that are in USDC that Circle can freeze, but there's more of it, according to Hayden Davis's own admissions. There's more that he has in other wallets that we have not yet been able to identify, but we do think it's appropriate to issue an order to him at this point, telling him that he needs to freeze the full 110. And then separately, we think that, because there is not a penny that came out of the $LIBRA scheme that is legitimate, not a single penny, so we think it's appropriate to step back and have an even broader order to these defendants that says, to the extent you extracted anything from $LIBRA, it needs to be frozen.

THE COURT: All right. Anything further that you want to present before I give you my thoughts?

MR. TREANOR: No, your Honor. I mean, I think we

have——well, I think the Circle issue——and I don't know that your Honor has questions on that. But that's really the most important aspect of this motion, because, you know, the orders to the defendants are one thing, and we presume that they're going to follow the orders of the Court. If we can serve them properly on them and they get notice of them, at least presumably they would follow them. That's not, you know, a certainty, because they can do as they will, and we'll be counting on them to basically self-execute the Court's order. But the Circle assets, we know Circle can actually freeze, and it's in their own documents. It's been done in other cases. And so that is a critical part of this order. That will guarantee that, you know, $57½ million are available to victims in this case if we get to a place where a recovery by the victims is appropriate. But we do think, that said, I don't want to diminish the importance of the broader orders that we've asked for.

THE COURT: And so you're asking for a TRO, which is by its nature a temporary and brief restraint, and you've put in your papers why you think that needs to be *ex parte*, and I for the most part accept that. But when you get to the preliminary injunction phase, a mere 14 days from now, or less, how are you going to make sure that everybody has the appropriate notice? Even if I let you serve this TRO by email in some instances, through a hyperlink to all the ways that

you've presented it in your papers, how are you going to get to everyone for a preliminary injunction hearing in 14 days?

MR. TREANOR: So, your Honor, we've set forth for the Court the various ways in which Mr. Burwick and his team have tried to serve the complaint against the defendants in this matter. Ben Chow has appeared, so we have one defendant who actually has appeared. We've had some discussions with Meteora. And so the efforts to serve the Davis defendants, who are, you know, Americans and, our information is, have been in the United States, have been very difficult and frustrated. There have been multiple attempts. But we believe they have active email addresses, and we're, you know, within reason, willing to take whatever steps the Court thinks is necessary. We don't think that, because they've been successful in evading service of the complaint, that, you know, we shouldn't be able to get a TRO or set a preliminary injunction hearing. We'll try what we can. We've had various avenues we've gone down. We heard that one defendant maybe was represented by counsel on the West Coast. That didn't pan out. At least that person didn't accept service. We have addresses, we have email addresses, we've tried a lot of different things, and we have some other avenues that we've proposed that we——things like bringing NFTs into the wallets at issue or——known wallets, but that are within reason, we're happy to do. I think in this type of a situation, where you have folks who are very

international and their conduct is on the blockchain and they have resources in cryptocurrency, creativity is important.

THE COURT: All right. Well, at this point we're only talking about the TRO, which requires actual notice as opposed to service of process, formal service of process. So let me give you my thoughts then. And I'll be clear, because I will give you my overarching reasoning, but my bottom line is I will enter the TRO. However, I will say now and probably at the end of my remarks that my views on this may change once I have briefing from the defendants. So this is based on my review of an *ex parte* filing. It is of a very brief nature, and I am, for the reasons that I will state, convinced that it needed to be *ex parte*. However, my findings, again, may change once I hear from the defendants, in lots of different respects.

So for example, I have some concerns about freezing the proceeds that are just proceeds from $LIBRA in the first bucket on any long-term basis because, unlike freezing the actual USDC that was traced from the account, the proceeds are more akin, it seems to me, as to holding assets just to ensure that you have somebody who can pay a judgment. And maybe that's not the case, and I'll hear more from the defendants, but that's one thing that struck me.

Another thing that struck me, obviously, will be anything anyone has to say about the merits once they have an opportunity to come forth and talk about the merits.

But all of that being said, I think you meet the standard for a brief TRO at this point and so I will enter it. But I'm going to give you a more fulsome reasoning for the TRO because I think that's important, because once it gets unsealed, I want to make sure that whoever comes in and looks at my reasoning has my full reasoning on the record and so we can go from there. But again, I will just highlight that this is, for purposes of a TRO, temporary, and I will be revisiting, if necessary, any of the holdings once I get any opposition on a PI or otherwise.

But if I could ask for your patience. It's going to be rather lengthy. If I could just read that into the record. I think that's the fastest way to do it, so that I can then sign the order today. But let me put that on the record.

MR. TREANOR: Sure.

THE COURT: Okay.

I'm not going to provide an extensive factual recitation given the lengthy record that I have in this expedited time frame. But to summarize, I'm going to refer to the plaintiff, Omar Hurlock, as plaintiff, and he brings this putative class action against Kelsier Ventures, KIP Protocol, Hayden Davis, Gideon Davis, Meteora, Thomas Davis, Julian Peh, and Benjamin Chow, and I'll refer to all of them as the defendants. The complaint asserts various state law claims arising from an allegedly fraudulent cryptocurrency scheme

around the public launch of the $LIBRA token. Specifically, the complaint was filed in state court and removed to federal court on May 9, 2025, and it sets forth three causes of action against all defendants:

(1) violation of the New York General Business Law (GBL) §§349 and 350;

(2) negligent misrepresentation; and

(3) unjust enrichment.

Plaintiff seeks relief in the form of compensatory and punitive damages, disgorgement and restitution, the appointment of a receiver, and other injunctive and equitable relief. Plaintiff now moves pursuant to federal rule of six procedure 65 for an *ex parte* temporary restraining order freezing cryptocurrency assets held or controlled by defendants, and for an order to show cause why a preliminary injunction should not issue against defendants that extends the TRO through the pendency of this action.

Specifically, plaintiff here seeks a TRO and ultimately a PI barring defendants from accessing (1) any $LIBRA cryptocurrency, or proceeds obtained through trading $LIBRA cryptocurrency, held or controlled by the defendants, and (2) approximately $110 million in $LIBRA proceeds held or controlled by defendant Hayden Davis, and (3) in connection with that request, defendants seek an order directing Circle Internet Group and its subsidiary, Circle Internet Financial,

LLC—I'll refer to it all as Circle—to freeze and deny access to approximately $58 million worth of USD coin (USDC) held in two cryptocurrency wallets that plaintiff's expert has traced to the defendants.

The Court received plaintiff's *ex parte* application by email to chambers last week, late last week, on May 21, 2025. The application included plaintiff's motion; a proposed order; a memorandum of law; a declaration from plaintiff's counsel, Tim Treanor; a declaration from plaintiff's retained cryptocurrency tracing expert, Justin Ehrenhofer. And I believe that's it. And I'll call that the expert declaration.

On Thursday, May 22, 2025, the Court scheduled the instant hearing to take place today, on May 26, via Microsoft Teams, and confirmed with plaintiff that this conference date was appropriate given the relief sought and counsel's availability.

The Court has reviewed and considered all of the plaintiff's materials. And for the reasons that I will now go over, I will grant the motion.

"The standards for granting a temporary restraining order and a preliminary injunction pursuant to Rule 65 . . . are identical." I'm going to cite to *Sterling v. Deutsche Bank Nat'l Tr. Co.*, 368 F.Supp.3d 723, 726 (S.D.N.Y 2019). A plaintiff requesting a TRO "must show (1) irreparable harm; (2) either likelihood of success on the merits or both serious

questions on the merits and a balance of hardships decidedly favoring the moving party; and (3) that [the requested relief] is in the public interest." That is *Nat'l Coalition on Black Civic Participation v. Wohl*, 498 F.Supp.3d 457, 469 (S.D.N.Y. 2020).

In deciding a motion requesting an injunction, the Court may consider the entire record, including affidavits, and even if there is hearsay. *Helio Logistics, Inc. v. Mehta*, 2023 WL 1517687, at *2 (S.D.N.Y. Feb. 3, 2023). Because plaintiff seeks *ex parte* relief——that is, the issuance of a TRO without notice to the defendants——he must also satisfy the requirements of Rule 65(f)(1), which requires: (A) "specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and (B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required."

As a threshold matter, the Court recognizes that under *Grupo Mexicano*, "Rule 65 does not empower a district court to enter a preliminary injunction freezing assets pending the adjudication of an action brought solely at law." *Paradigm BioDevices, Inc. v. Centinel Spine, Inc.*, 2013 WL 1915330, at *2 (S.D.N.Y. May 9, 2013). And that case cited to *Grupo Mexicano*. However, where the moving party asserts an equitable interest in the opposing party's assets, "a court may in the

interim invoke equity to preserve the status quo pending judgment . . . and, as many courts have held, where plaintiffs seek both equitable and legal relief in relation to specific funds, a court retains its equitable power to freeze assets." *Id.* And in that case, Judge Furman collected the cases.

"Here, plaintiff has asserted a claim for unjust enrichment," which is "equitable in nature, and courts in this district have found that such a claim can serve as the basis for a preliminary injunction freezing assets." *Shaoxing Bon Textiles Co. v. 4-U Performance Group LLC,* 2017 WL 737315, at *2 (S.D.N.Y. Feb. 6, 2017). Plaintiff also seeks equitable relief on its GBL claim in the form of a permanent injunction, restitution, and disgorgement of profits from defendants' alleged scheme, which are the very assets sought to be frozen here. *See* Treanor Decl. ¶ 3; Compl. at 35, 39-40. As the Second Circuit observed in *Gucci America, Inc. v. Weixing Li,* the "ancient remed[y] of. . . restitution ha[s] compelled wrongdoers to disgorge their ill-gotten gains for industries." 768 F.3d 122, 132 (2d Cir. 2014). Accordingly, where, as here, the "preliminary injunction sought [is] 'ancillary' to the plaintiff's claims for 'final equitable relief,' *Grupo Mexicano* provide[s] no impediment" to ordering an asset freeze to preserve the status quo. *Shamrock Power Sales, LLC v. Scherer,* 2016 WL 6102370, at *4 (S.D.N.Y. Oct. 18, 2016). The Court makes this finding, again, for purposes of an *ex parte* TRO

where there is a risk of dissipation of assets that I will discuss in a moment, but without prejudice to revisiting it if, on briefing by the defendants for purposes of the PI or otherwise, a different conclusion is warranted.

The Court will now turn to the preliminary injunction factors, starting first with irreparable harm.

Demonstrating irreparable harm requires that a party show "they will suffer an injury that is neither remote nor speculative, but actual and imminent, and one that cannot be remedied if a court waits until the end of trial to resolve the harm." *Faiveley Transp. Malmo AB v. Wabtec Corp.*, 559 F.3d 110, 118 (2d Cir. 2009).

Temporary restraining orders should generally not be granted when a loss can be compensated with monetary damages, as well as a PI that has that same standard. *See Rodriguez ex rel. Rodriguez v. DeBuono*, 175 F.3d 227, 234 (2d Cir. 1999). In such cases, however, "Courts in this circuit have granted preliminary injunctions . . ." if the nonmovant's assets may be dissipated before final relief can be granted, or where the nonmovant threatens to remove its assets from the Court's jurisdiction." *Westchester Fire Ins. Co. v. DeNovo Constructors*, 177 F.Supp.3d 810, 814 (S.D.N.Y. 2016). Under these circumstances, "injunctive relief is appropriate because 'assets [the plaintiff] seeks are likely to disappear unless the application is granted." *Id.*

Here, plaintiff asserts that he and the class will suffer irreparable harm absent a TRO because there is a high risk of dissipation of the funds at issue. Specifically, plaintiff emphasizes that cryptocurrency is "much more easily dissipated than assets maintained in the traditional financial system." Mem. at 14. Plaintiff also points to public statements made by defendant Hayden Davis, the purported custodian of the funds at issue, or at least some of the funds at issue, indicating that he is unwilling to refund the assets, has distributed the assets to at least one third party, and has considered entirely disposing the assets to third parties. Treanor Decl. ¶¶ 23-26. Moreover, Davis has evaded attempts at service, according to plaintiff, has recently traveled internationally to use the assets and evade purported threats from victims, and has moved his company (defendant Kelsier Ventures) to Dubai. Treanor Decl. ¶¶ 33-35. More broadly, plaintiff expresses concern that the ongoing service attempts, combined with the recent removal of this case to federal court, could "trigger movement of funds." Treanor Decl., ¶ 33. For similar reasons, plaintiff has not yet tried to serve the instant request on defendants out of concern that alerting them of "plaintiff's desire to freeze these assets" would trigger their dissipation, as they "are all held in cryptocurrencies" and "very easy to transfer out of the court's jurisdiction." Treanor Decl. ¶ 34.

With this in mind, the Court agrees, for purposes of a TRO, "[t]he cryptocurrency at issue here 'poses a heightened risk of asset dissipation,'" which warrants a temporary prejudgment and preservice asset freeze. I'm also looking to cases that have done the same: *Jacobo v. Doe*, 2022 WL 2052637, at *3 (E.D. Cal. June 7, 2022). Other courts across the country have found that "the speed and anonymous nature of cryptocurrency transactions" increase the likelihood that the assets at issue may be rendered untraceable before final relief could be granted. *Id.* And cases are collected from the *Jacobo* case. "[C]ryptocurrencies are circulated through a decentralized computer network, without relying on traditional banking institutions or other clearinghouses. This independence from traditional custodians makes it difficult for law enforcement to trace or freeze cryptocurrencies in the event of fraud or theft." *Fed. Trade Comm'n v. Dluca*, 2018 WL 1830800, at *2 (S.D. Fla. Feb. 28, 2018). *See also Heissenberg v. Doe*, 2021 WL 8154531, at *2 (S.D. Fla. Apr. 23, 2021). And in that case, the court found that plaintiff had good reason to believe that the defendant would hide or transfer his ill-gotten gains beyond the jurisdiction of th[e] court unless the assets are restrained" in light of "the speed with which cryptocurrency transactions are made as well as the anonymous nature of those transactions."

The risk of harm posed by the transient and

untraceable nature of the cryptocurrency is heightened in light of Davis's public statements, the evasion of service attempts, and alleged offshoring of his company's operations. *See*, for example, *Gaponyuk v. Alferov*, 2023 WL 4670043, at *2 (E.D. Cal. July 20, 2023). And in that court, in that case, the court found a likelihood of irreparable harm where the plaintiff "argued that. . . there [was] a significant risk [that] the defendants [would] transfer his assets to 'untraceable cryptocurrency accounts or to offshore entities organized in unknown locations." In *Jacobo*, 2022 WL 2052637, at *3, the court also found a likelihood of irreparable harm where 'it would be a simple matter for [the defendant] to transfer. . . cryptocurrency to unidentified recipients outside the traditional banking system' and effectively place the assets at issue in this matter beyond the reach of the court."

For these reasons, the Court finds that plaintiff has sufficiently demonstrated a likelihood of irreparable harm given the risk of asset dissipation, in light of the unique considerations posed by cryptocurrency.

The next factor is whether plaintiff has demonstrated sufficiently serious questions going to the merits of his claim. That standard allows courts to assess, at a preliminary injunction stage, in a flexible manner, the varying factual scenarios and uncertainties that are inherent at the outset of a particularly complex litigation and, instead of showing

likelihood of success on the merits, can show that there are sufficiently serious questions going to the merits. "The significance of this flexibility is that courts... have the discretion to rely on the pleadings and accompanying affidavits, . . . provided that the movant has raised 'questions going to the merits so serious, substantial, difficult and doubtful, as to make them a fair ground for litigation and thus for more deliberate investigation.'" *State Farm Mut. Automobile Ins. Co. v. Tri-Borough NY Med. Prac. P.C.*, 120 F.4th 59, 83 (2d Cir. 2024).

Turning to Count One, plaintiff alleges that defendants violated New York's GBL §§ 349 and 350, which are intended to "protect all consumers, New Yorkers and non-New Yorkers alike, from deceptive acts or practices or false advertising that originates or occurs at least in part in New York." *Goshen v. Mut. Life Ins. Co. of N.Y.*, 774 N.E.2d 1190 (N.Y. 2002). "These two statutes require a claimant to show that the defendant engaged in (1) consumer-oriented conduct that is (2) materially misleading and that (3) plaintiff suffered injury as a result of the allegedly deceptive act or practice." *MacNaughton v. Young Living Essential Oils, LC*, 67 F.4th 89, 96 (2d Cir. 2023).

As to the first element, the New York Court of Appeals has found that the "extensive marketing" of investment instruments with a "broad[] impact on consumers" falls within

the ambit of "consumer-oriented conduct." *Gaidon v. Guardian Life Ins. Co.*, 725 N.E.2d 598 (N.Y. 1999). Here, plaintiff analogously alleges that defendants engaged in a public marketing campaign for $LIBRA to several million consumers on social media.

Second, a "defendant's actions are materially misleading when they are 'likely to mislead a reasonable consumer acting reasonably under the circumstances.'" *Himmelstein, McConnell, Gribben, Donoghue & Joseph v. Matthew Bender & Co.*, 171 N.E.3d 1192, 1198 (N.Y. 2021). For example, the New York Court of Appeals has found that encouraging consumers to purchase financial products by knowingly making unrealistic statements about future returns satisfies this prong. Here, plaintiff claims that defendants made similarly unrealistic and misleading statements to encourage consumers to purchase $LIBRA, only to "quickly extract the funds" after "the public started buying." Mem. at 3. Plaintiff alleges, among other things, that defendants falsely advertised the token "as an opportunity to invest in Argentine small businesses when there [was] no real plan" to do so, and incrementally presented artificially inflated prices for the token to "give retail buyers the appearance of a successful launch." Mem. at 7-8, 19.

Lastly, plaintiff alleges that he and similarly situated individuals suffered an injury as a result of

purchasing the tokens: the complaint pleads that plaintiff incurred losses after purchasing the token, and the TRO declaration includes an analysis showing that 86 percent of reviewed cryptocurrency wallets that traded the token lost at least $1,000. *See* Compl. at 32-35; Treanor Decl. ¶ 13.

Together, the Court finds that plaintiff's allegations and supporting materials sufficiently raise serious questions going to the merits of his GBL claim at least at this juncture. Again, the Court may revisit this finding after reviewing briefing by the parties at the PI stage, or any earlier stage in which this order is sought to be lifted, but for purposes of an expedited TRO, this standard is satisfied.

Because a plaintiff must only show that there are serious questions with respect to one of the claims to obtain preliminary relief, the Court need not reach plaintiff's other equitable claim for unjust enrichment. *L.V.M. v. Lloyd*, 318 F.Supp.3d 601, 618 (S.D.N.Y. 2018). The Court also does not reach plaintiff's negligent misrepresentation claim, which appears to seek only monetary damages for relief and may not serve as the basis for an asset freeze under Rule 65.

Lastly, the Court considers the balance of hardships and public interest.

To start, the Court does find that the balance of hardships decidedly tips in plaintiff's favor. "A delay in defendant's ability to transfer the assets only minimally

prejudice defendant, whereas withholding injunctive relief would severely prejudice plaintiff by providing defendant time to transfer the allegedly purloined assets into other accounts beyond the reach of this court." *Jacobo*, 2022 WL 2052637, at *6; *see also Martinangeli v. Akerman*, 2018 WL 6308705, at *2 (S.D. Fla. Sept. 14, 2018). And in that case, the court ordered prejudgment freeze of cryptocurrency assets because it would "preserve the status quo ante and prevent irreparable harm until such time as the Court may hold a hearing." I also looked at *Heissenberg*, 2021 WL 8154531, at *2, which supports this finding. Moreover, Davis has publicly stated that the funds in question do not belong to him. *See* Treanor Decl. ¶ 26, which indicates that he has a minimal interest in maintaining access to those funds while the Court takes more time to adjudicate the matter with briefing from all parties. At bottom, "[t]he [C]ourt finds. . . that a short-term freeze is unlikely to present any great harms," and it "can lift this order if the defendants appear and show a continuing injunction would cause them prejudice." *Gaponyuk*, 2023 WL 4670043, at *3.

Next, the Court finds that the public interest would be served by an injunction. "[A] temporary asset freeze will serve the public's interest in stopping, investigating and remedying frauds." *Id.* It would also "provid[e] assurance that courts will protect investors' assets from theft and will aid investors in their recovery of stolen assets when they can

be readily located and traced to specific locations, like the purloined assets in this action." *Heissenberg*, 2021 WL 8154531, at *2; *accord Jacobo*, 2022 WL 252637, at *6.

Therefore, the Court finds that plaintiff has satisfied the TRO relief factors, warranting a temporary asset freeze pending further briefing from the parties.

Before addressing next steps, the Court will address the appropriate bond to be posted.

"Rule 65(c)'s bond requirement serves a number of functions. It assures the enjoined party that it may readily collect damages from the funds posted in the event that it was wrongfully enjoined, and that it may do so without further litigation and without regard to the possible insolvency of the plaintiff." *Donohue v. Mangano,* 886 F.Supp.2d 126, 163 (E.D.N.Y. 2012). "District courts are 'vested with wide discretion' to determine the appropriate amount of the bond, and. . . a district court in its discretion may deny a bond altogether if there is no proof of likelihood of harm to the non-movant." *IME Watchdog, Inc. v. Gelardi,* 732 F.Supp.3d 224, 243 (E.D.N.Y. 2024).

The Court agrees with the plaintiff that a nominal bond of $100 is adequate here. There is no indication from the current record that a short-term asset freeze will result in any harm to the nonmovants. Defendant Davis has publicly disclaimed ownership of the assets, referring to himself as

only their "custodian." Treanor Decl. ¶¶ 26-27. And plaintiff's expert represents that there have been no incoming or outgoing transactions through the wallets sought to be frozen since February. *See* Expert Decl. ¶ 3. This further underscores defendants' minimal interest in retaining access to the assets over the next two weeks while the Court maintains the status quo. *Cf. FloodBreak, LLC v. Diego Tr.*, 2024 WL 897932 (D. Conn. Mar. 1, 2024). And in that case, the Court declined to require a bond where asset freeze served to maintain the status quo, and the defendants had little interest in the assets. *See also Gaponyuk*, 2023 WL 4670043, at *3, where the Court declined to require a bond where the "short-term freeze" of cryptocurrency accounts was "unlikely to present any great harms."

Again, this is a preliminary holding, and it may well be that, especially for the injunction regarding the first bucket, meaning any $LIBRA cryptocurrency or proceeds, obtained through trading $LIBRA cryptocurrency, that may well create a hardship for the defendants and therefore the Court may determine that the bond should be revisited, should the defendants request that, or should the injunction be extended any longer than the 14 days.

Pursuant to Rule 65(d), the TRO will be binding upon all parties who receive *actual notice* of the order, by personal service or otherwise, in addition to their officers, agents,

employees, and attorneys, and all other persons who are in active concert or participation with those individuals or entities.

I will also compel Circle, who is a nonparty, to freeze the portion of the assets held in two cryptocurrency wallets. "While jurisdiction over a defendant is all that a court needs to issue an injunction freezing that party's assets, a district court can enforce an injunction against a nonparty," such as Circle, "if it has personal jurisdiction over that nonparty." *Tiffany (NJ) LLC, Tiffany and Co. v. China Merchants Bank,* 589 Fed. App'x. 550, 553 (2d Cir. 2014). And the Court has general personal jurisdiction over Circle because it is headquartered in this district. *See* Treanor Decl. ¶ 29, *Enigma Software Group USA v. Malwarebytes,* 260 F.Supp.3d 401, 409 (S.D.N.Y. 2017); *Parker v. Bursor,* 2024 WL 4850815, at *2 n.2 (S.D.N.Y. Nov. 21, 2024).

The Court finds that plaintiff's proposed methods of alternative service are sufficient to ensure that defendants and Circle receive actual notice of the TRO as required under Rule 65. But the Court will not permit service of the summons and complaint on the defendants by these alternative service methods. Plaintiff has not formally moved for alternative service of the summons and complaint, and the Court does not have sufficient information to determine whether such service would conform with Rule 4. Plaintiff may file such a motion at

a later time if he believes that the applicable legal requirements have been satisfied.

After this hearing, the Court will sign a TRO that's revised from the proposed TRO submitted by the plaintiff. Plaintiff shall serve the signed order, all supporting papers, and a transcript of these proceedings, once they are made available, on Circle and defendants by the methods provided in the order.

And how soon will you be able to serve the order and your supporting papers, Mr. Treanor?

MR. TREANOR: How soon. Well, I think the methods that are set forth, we can seek to execute on as quickly as possible.

Max, you might have a little more to say about that.

THE COURT: I believe you're starting tomorrow, right?

MR. BURWICK: Yes, your Honor, they've been set up and briefed, and they're ready to move after we complete this.

THE COURT: Okay. That's good. And just work with the court reporter to order an expedited transcript so that that is available to anybody who wishes to read that.

I'm going to put in the order that service shall be done by tomorrow. That gives you enough time, I think. And you'll tell me, please, when we can make the filing, when you can publicly file the filings. You're going to refile those, I assume. Well, you've sent them to me by email, but once they

are served, you'll file them publicly on the docket; is that right, Mr. Treanor?

MR. TREANOR: I think so, your Honor. I think once we've gone through the steps that are in the order, we will then consider service of this motion and your order as being completed and we'll file the paperwork.

THE COURT: Okay. That's good.

Let's talk about the schedule then. So this TRO will be in place for 14 days, maximum of 14 days. So if you serve it today and tomorrow and it's in place for 14 days, I think that means that the hearing needs to take place, a PI hearing, on June 9th. How about June 9th at 10 a.m.? Mr. Treanor, will that work?

MR. TREANOR: Your Honor, I'm consulting my calendar. I think that is fine. That's a Monday.

Yes, your Honor, that works for me. Max?

MR. BURWICK: That works for me, your Honor.

THE COURT: So I'll put the PI hearing on for June 9th at 10 a.m. I'll also make any opposition due June 2nd and your reply due June 5th so I have the time to look it over before the PI hearing.

I assume that what's going to happen here is that everyone's going to come forth and ask for some sort of an extension, and so that day may or may not hold, but I expect that once people appear, you can have the discussions, the

appropriate discussions if anybody needs a reasonable extension, etc. And if there's agreement, I generally do that. If somebody appears and says, listen, I want to move to lift the TRO, then we'll be moving even more quickly than the June 9th date. But we'll at least have a placeholder. I think it's 13 days out, but it falls within the maximum that's permitted for a TRO.

Okay. Is there anything further that we need to do here today, Mr. Treanor?

MR. TREANOR: No, your Honor. I think you've covered it all. And we thank you for your thoughtfulness.

THE COURT: Thank you.

Mr. Burwick, anything further here today?

MR. BURWICK: No, your Honor. Thank you.

THE COURT: Okay. I'll put that order out. Actually, what I will do is I will sign the order and send it to you so that you have the order. I won't file it on the docket yet. It will be filed then when all the papers get filed on the docket. So when you file them, we'll file the order as well, and then everybody can have appropriate notice. Let's make sure that happens as soon as possible.

And I think that covers everything. Okay. Well, thank you very much. As I said before and I'll say again at the conclusion, these are temporary findings based on the exigency of the present circumstances. They are all subject to

revision if I get further information from the defendants or otherwise reconsider based on the information that's presented with everything before me, but for now, I will put in the restraint on a temporary basis for the limited time period permitted under the rule.

Okay. Thank you all very much, and court is adjourned.

MR. TREANOR: Thank you, your Honor.

MR. BURWICK: Thank you.

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